THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.3984 of 2006

18th July 2006

Between:

V.Srinivas, S/o.Balabhaskaram, 35 years, Typist, O/o.M.P.D.O., Markapur, Prakasam District.

...PETITIONER

AND

1. The Government of Andhra Pradesh, rep.by its Principal Secretary, Panchayat Raj and Rural Development (Est-V-A) Department, Secretariat, Hyderabad.

And three others.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.3984 of 2006

ORDER: (Per the Hon'ble Mr Justice Ramesh Ranganathan)

Heard both sides and at their request, the Writ Petition itself is taken up for final disposal.

The order of the Andhra Pradesh Administrative Tribunal, Hyderabad ('the Tribunal' for brevity) in O.A.No.677 of 2005 dated 22.02.2006 is impugned in this Writ Petition. Both the petitioner herein and the fourth respondent seek retention at Markapur. Aggrieved by the order of transfer passed on 26.06.2005, the petitioner herein filed O.A.No.3142 of 2005 on the ground that since he was an Executive Member of the Union, he was required to be retained for a period of six years at Markapur. The Tribunal initially granted stay. The petitioner, in the meanwhile, submitted a representation to the Government. The Government acceded to his request and retained him at Markapur. As

the Chief Executive Officer did not implement the order of the Government, the petitioner filed O.A.No.7995 of 2005. During the pendency of proceedings before the Tribunal the petitioner, by order dated 16.12.2005, was posted at Markapur. The fourth respondent, on the other hand, was posted to Donakonda. Aggrieved by the proceedings dated 16.12.2005 transferring the petitioner back to Markapur, the fourth respondent herein filed O.A.No.677 of 2006 and the Tribunal, by order dated 22.02.2006, while disposing of the O.A., held as under.

> "Without going to the merits of the case, it is sufficient to remand the matter to the 2nd respondent i.e., the appellate authority to pass orders on the appeal filed by the 4th Respondent by giving an opportunity to the applicant herein, if necessary by hearing the applicant and the 4th respondent herein also. As this Court has already directed status-quo be maintained as on 05.07.2005 and the same status-quo shall be continued pending disposal of the appeal, the 2nd respondent will decide the appeal by taking into account the order passed by this Tribunal and the rules on subject, within a period of three weeks from the date of receipt of a copy of this order."

Aggrieved thereby, the petitioner approached this Court and this Court by order in W.P.M.P.No.4972 of 2006 dated 13.03.2006, directed that *status quo* as on the date of the order be maintained. On a vacate stay petition being filed, the Writ Petition itself has been taken up for hearing and final disposal.

Sri B.Srinivasa Rao, learned counsel appearing on behalf of the fourth respondent, would state that the petitioner's initial transfer was pursuant to a counseling held wherein he was posted to a place of his choice and as such did not necessitate his being transferred back to his original place of posting at Markapur. According to the learned counsel, the petitioner was not entitled to continue at Markapur merely on the ground that he was an Executive Committee Member of the Union inasmuch as he was not an Executive Committee Member of any State Committee but was merely an Executive Member of the Markapur Division of a Union.

Sri Siva, learned counsel for the petitioner, on the other hand would submit that since the Government had favourably considered his representation, had directed his being transferred back to Markapur, it was not open to the Tribunal to interfere in such matters of transfer.

It is well settled that transfer is an incidence of service. The Government, on administrative exigencies, is entitled to transfer employees from one place to another. Any grievance which an employee may have regarding his transfer, can only be addressed by

the competent authority on a representation submitted by him in this regard. It is always open to the employer to consider an employee's representation favourably and transfer him back to his original place of posting. These are all matters for the employer to decide and not for the Courts/Tribunals to interfere. While guidelines relating to transfer are, normally, to be adhered to by the employer, they cannot be enforced in Courts. Unless statutory provisions govern matters relating to transfer, no interference is called for in proceedings under Article 226 of the Constitution of India. If an employee is aggrieved by his transfer, the only remedy available to him is to submit a representation to ventilate his grievance before the competent authority concerned who may take an appropriate decision on the said representation. No statutory rule, which governs matters relating to the transfer of either the petitioner or the fourth respondent, has been brought to our notice. Since transfer is, but an incidence of service, the Tribunal exceeded its jurisdiction in remanding the matter to the so called appellate authority to pass orders afresh after hearing both the sides. No statutory rule providing for an appeal against an order of transfer has been brought to our notice. As the order of transfer and the petitioner being posted to Markapur on 16.12.2005, is an order, of which the fourth respondent is

aggrieved by, it is open to him, in case he so chooses, to submit a representation in this regard to the competent authority.

Sri B.Srinivas Rao, learned counsel for the fourth respondent, would submit that since the order of the Tribunal, directing that the matter be remitted to the appellate authority, is being set aside on the ground that there is no appeal against the order of transfer it is but proper that the matter be remanded back to the Tribunal for an adjudication on the merits of the transfer. A perusal of the application filed in support of the O.A. would disclose that the fourth respondent-applicant has not questioned the order dated 16.12.2005 on the ground that the order of transfer was passed *mala fide* or on extraneous considerations. Since transfer is an incidence of service and it is for the Government or the prescribed competent authority, on exigencies of administration, to decide on all these aspects and as neither the Tribunal nor this Court under Article 226 of the Constitution of India would normally interfere in such matters of transfer, no purpose would be served in sending the matter back to the Tribunal.

The Writ Petition is accordingly disposed of. However, in the circumstances, without costs.

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(B.PRAKASH RAO, J)

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(RAMESH RANGANATHAN, J)

18th July 2006
RRB